IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE P.R.RAMAN
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

ST.REV..No. 272 OF 2005

TA.629/2002 OF S.T.A.T.ADDL.BENCH,ERNAKULAM
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REVISION PETITIONER/APPELLANT/REVENUE:

STATE OF KERALA,
REP. BY JOINT COMMISSIONER (LAW),
COMMERCIAL TAXES, ERNAKULAM.

BY GOVERNMENT PLEADER SRI. GEORGEKUTTY MATHEW.

RESPONDENTS: RESPONDENT/ASSESSEE:

M/S. SELVAM BROILERS (P) LTD.,
THRIPUNITHURA.

BY ADV. SRI.K.SRIKUMAR
SRI.K.MANOJ CHANDRAN

THIS SALES TAX REVISION HAVING BEEN FINALLY HEARD ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

P.R. RAMAN & K.P. BALACHANDRAN, JJ.

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S.T. REVISION 272/2005

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DATED THIS, THE 4TH DAY OF DECEMBER, 2006.

O R D E R

Raman, J.

Revenue is the revision petitioner. Respondent/assessee was a dealer in chicken. He is having hatcheries or poultry farms both within and outside the State. During the assessment year 1998-99 the assessee filed return. But chicks and chicken brought from outside the State was not included in the return. Based on the inspection conducted by the Intelligence Officer, penalty proceedings were initiated which were ultimately compounded by the assessee after paying Rs. 1 lakh. Based on the inspection, several irregularities were said to have been detected as a result of which, the assessee's return was rejected and assessment completed on best judgment basis. The assessee claimed exemption in respect of chicks and chicken brought from outside the State as per SRO No. 1727/93, for the first time before the tribunal. The tribunal, by the order impugned in this revision, allowed the appeal and held that Entry 24 of Schedule III of SRO 1727/93 would only show that poultry farmers including hatcheries in the State are

entitled to tax exemption on the sales turnover of chicks and chicken and the entry does not stipulate any condition to avail or not to avail the benefit envisages in the notification. The tribunal sought support for its finding on a subsequent notification issued as SRO 291/2000 wherein it was specifically restricted and confined to the turnover of sales of chickens hatched and reared within the State. As a matter of fact, the changes were already brought out by immediately preceding notification SRO 1090/99. However, the question came up for consideration before this Court in **State of Kerala v. Subaida Begum** (2006 (4) KLT 276) and a Division Bench of this Court, after considering SRO 1727/93 and SRO 291/2000, came to the conclusion that the latter notification 291/2000 is only clarificatory in nature and even otherwise based on the notification 1727/93 it cannot be held that chickens brought from other States are also entitled for exemption. In other words, the restriction, though not so explicit was read into the notification SRO 1727/93. Thus the point that is raised in the present revision is squarely covered by the decision cited supra, in favour of the Revenue and against the assessee. Accordingly, we allow this revision and set aside the order of the tribunal.

2. However, it is brought to our notice by the learned counsel for the assessee that this Court had extended the benefit of waiver of 40% interest

payable under Section 23(3) of the Kerala General Sales Tax Act, taking note of the fact that there is an amended scheme 2004 and the sales tax revision case itself is filed in 2004. Though this revision was filed only in 2005 the order of the tribunal was passed in 2004 itself. As such we do not find any distinction to be made in the matter of extension of benefit of 40% with interest under Section 23(3) of the Act.

3. Accordingly, we hold that the assessee will also be entitled for the same relief as was extended in the reported decision. Accordingly, we grant 40% waiver of interest payable under Section 23 (3) of the Kerala General Sales Tax Act; however on condition that the respondent clears the arrears of tax with 60% interest.

4. Even though in the earlier case, installment facility was extended only for three months, considering the large stake, we think it is appropriate to extent installment facility by six months. Accordingly, we direct that the respondent shall clear the arrears of tax with 60% interest in six equal monthly installments, first of which shall be paid on or before 1.1.2007 and thereafter, on the 1st day of every succeeding months. In the event of any default committed by the respondent in payment of the

installments as stated above, the revision petitioner will be free to recover the amount due from him in a lump.

P.R. RAMAN,
(JUDGE)

K.P. BALACHANDRAN,
(JUDGE)

knc/-